IN THE SUPREME COURT OF THE STATE OF DELAWARE

DANIEL ANDREWS,[1]	§	
	§	
Petitioner Below-Appellant,	§	No. 645, 2010
	§	
	§	
v.	§	Court Below—Family Court
	§	of the State of Delaware,
JAIME ANDREWS,	§	in and for Kent County
	§	File No. CS02-04531
Respondent Below-Appellee.	§	Petition Nos. 09-34492 and 10-03236

Submitted: April 22, 2011
Decided: June 27, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 27th day of June 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The appellant, Daniel Andrews ("Father"), filed this appeal from a Family Court order, dated September 13, 2010, denying his petition for modification of custody. Having reviewed the parties' respective contentions and the record below, we find no error in the Family Court's findings and conclusions. Accordingly, the Family Court's judgment shall be affirmed.

[1] Pseudonyms were assigned to the parties pursuant to Supreme Court Rule 7(d).

(2) The record reflects that the parties are the parents of three minor children. At the time of the Family Court's hearing in June 2010, the children were ages 16, 13, and 11, respectively. In February 2005, the parties were awarded joint custody of their children with primary residential placement with Mother. Father had standard visitation. In February 2007, Mother filed an emergency motion for sole custody and to stay Father's visitation rights. Mother alleged that Father was planning to flee the country. After an emergency hearing on February 27, 2007, at which Father did not appear, the Family Court awarded Mother sole custody of the children with Father having supervised visitation at the Visitation Center in Georgetown. Thereafter, a full hearing was held on May 16, 2007. On August 13, 2007, the Family Court entered a final order granting Mother sole custody of the children and making Father's supervised visits with the children contingent upon his participation in counseling.

(3) In October 2009, Father filed a petition to modify custody requesting joint custody, unsupervised visitation, long weekends, summer vacation, and the ability to make medical decisions for the children. He also requested the Family Court to return his passport so that he could travel.[2] The Family Court held a hearing on Father's petition on June 15, 2010.

[2] The Family Court previously had ordered Father to surrender his passport in February 2007, although Father had already left the country for Israel when the order issued. He remained abroad for a year and a half and eventually was granted Israeli citizenship before he returned to the United States.

Mother and Father both appeared, pro se, and testified. The Family Court heard testimony from several additional witnesses and also interviewed the parties' three children. After considering all of the evidence, the Family Court denied Father's petition to modify custody and further ordered that Father could not have visitation with the children until he underwent a psychological evaluation, at which point he would be permitted to file a motion for modification of visitation. The Family Court also ordered that Father's passport be returned to him.

(4) In his opening brief on appeal, Father argues that the Family Court erred as a matter of law in refusing to issue subpoenas to have two of his children testify at the hearing. Father also argues that the Family Court abused its discretion in the weight it afforded each witness' testimony and that the court's decision was a product of gender bias.

(5) In reviewing a motion for modification of custody that is filed more than two years after the Family Court's most recent custody order,[3] the Family Court may modify its order after considering: (i) whether any harm is likely to be caused to the children by the custody modification (and weighing that harm against any potential advantages); (ii) the compliance of

[3] The Family Court incorrectly referred to 13 DEL. CODE ANN. § 729(c)(1), which is the standard for considering custody modification motions filed within two years of the Family Court's most recent custody order. We find this error harmless, however, because the Family Court actually considered all of the pertinent factors under Section 729(c)(2), related to motions filed more than two years from the most recent custody order.

the parents with prior custody orders; and (iii) the best interests of the children in accordance with 13 Del. C § 722.[4]

(6) Our standard of review of a decision of the Family Court extends to a review of the facts and law, as well as the inferences and deductions made by the trial judge.[5] We have the duty to review the sufficiency of the evidence and to test the propriety of the trial court's conclusions.[6] Findings of fact will not be disturbed on appeal unless they are determined to be clearly erroneous.[7] We will not substitute our opinion for the inferences and deductions of the trial judge if those inferences are supported by the record.[8]

(7) In this case, it was within the Family Court's discretion to choose to interview the children in chambers rather than compelling them to

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[4] Section 722(a) provides:
The Court shall determine the legal custody and residential arrangements for a child in accordance with the best interests of the child. In determining the best interests of the child, the Court shall consider all relevant factors including:
(1) The wishes of the child's parent or parents as to his or her custody and residential arrangements;
(2) The wishes of the child as to his or her custodians(s) and residential arrangements;
(3) The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabitating in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child's best interests;
(4) The child's adjustment to his or her home, school and community;
(5) The mental and physical health of all individuals involved;
(6) Past and present compliance by both parents with their rights and responsibilities to their child under § 701 of this title; and
(7) Evidence of domestic violence as provided for in Chapter 7A of this title.

[5] *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

[6] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d 1202, 1204 (Del. 1979).

[7] *Mundy v. Devon*, 906 A.2d 750, 752 (Del. 2006).

[8] *Wife (J.F.V.) v. Husband (O.W.V., Jr.)*, 402 A.2d at 1204.

testify in court.[9] We find no abuse of the Family Court's discretion in that regard. Moreover, we find that the Family Court's factual determinations are supported by the record, and we find no basis to disturb those findings on appeal. The Family Court properly applied the law to the facts in concluding that Father had failed to sustain his burden of proving that a modification of custody was in the children's best interests. His contention that the Family Court's ruling was the product of gender bias is completely unsupported by the record.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

[9] *See* DEL. CODE ANN. tit. 13, § 724(a) (2009).